

### **REMARKS**

This responds to the Office Action dated April 7, 2006.

Claims 1, 6, and 7 are amended, claims 18-21 are cancelled without prejudice or disclaimer, and claim 29 is added; as a result, claims 1-17, 22-25, and 29 are now pending in this application.

#### **§102 Rejection of the Claims**

Claims 18 and 20-21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Duysens et al. (U.S. Patent No. 6,360,130). Claims 18 and 20-21 have been cancelled without prejudice or disclaimer.

#### **§103 Rejection of the Claims**

Claims 1-5, 8-15 and 17-24 were rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Fogarty et al. (U.S. Patent No. 5,690,648) alone or in view of Thomson et al. (U.S. Patent No. 6,183,485). Claims 18-21 have been cancelled without prejudice or disclaimer.

#### **Claims 1-5 and 8-10**

Applicant has amended claim 1 to include subject matter of dependent claims 6 and 7. Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Fogarty et al. (U.S. Patent No. 5,690,648) alone or in view of Thomson et al. (U.S. Patent No. 6,183,485) and further in view of Fleischhacker (U.S. Patent No. 4,596,559), and claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Fogarty et al. (U.S. Patent No. 5,690,648) alone or in view of Thomson et al. (U.S. Patent No. 6,183,485) in further view of Hermann et al. (U.S. Patent No. 5,843,031).

Applicant believes amended claim 1 is not anticipated by or obvious in view of the cited references since there is no suggestion to combine the references as suggested by the Examiner. The Examiner asserts that “[u]sing a peelable introducer tub [sic] to aid in inserting instruments in the body would have been obvious in view of the teachings of Fleischhacker.” (Page 3 of

Office Action). Applicant traverses. Fleischhacker discusses an introducer tool for introducing a catheter into a blood vessel. (Abstract). In contrast, the Fogarty reference discusses using a trocar 22 to introduce an instrument 26. (Col. 6, lines 31-41). However, instrument 26 is used for manipulation and then is manually removed by the surgeon. There is nothing in the way of removing the trocar 22. Accordingly, there is simply no motivation in the art for the trocar 22 to have a tear-away structure as discussed in Fleischhacker.

Moreover, there is also no motivation to provide a lubricious coating for trocar 22. There is no suggestion in the Fogarty reference or in any other reference that the trocar 22 has any need of a lubricious coating. Accordingly, claim 1 is not obvious in view of the cited references.

Claims 2-5 and 8-10 include each limitation of parent claim 1 and are therefore also not anticipated or obvious in view of the cited references. Reconsideration and allowance is respectfully requested.

#### Claims 11-15 and 17

Applicant believes that claim 11 is not anticipated by or obvious in view of the cited references since the neither cited reference includes or suggests each element arranged as in the claim. For instance, Applicant cannot find in either of the cited references a tunneling rod extending from a handle end to a tip end, wherein the elongated tube is mountable around the tunneling rod, the tunneling rod for inserting the elongated tube subcutaneously; or a holding member adapted to hold an end of the electrode lead to pull the electrode lead through the elongated tube, as recited in claim 11. In contrast, the Fogarty reference does not discuss a tunneling rod at all and does not describe using a tunneling rod to insert trocar 22. Thomason also does not discuss any type of tunneling rod.

Claims 12-15 and 17 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

#### Claims 22-24

Applicant believes that claim 22 not anticipated by or obvious in view of the cited references since the neither cited reference includes or suggests each element arranged as in the claim. For instance, Applicant cannot find in either of the cited references a lead holding

member adapted to hold an end of the electrode lead located outside the first end of the elongated tube such that the end of the electrode lead can be pulled through the elongated tube to exit on the second end of the elongated tube, as recited in claim 22. The Fogarty reference does not give any indication that the instrument 26 can be used to pull the end of an electrode lead through an elongated tube. As described, the instrument 26 is pushed through trocar 22. (Col. 6, lines 31-41).

Claims 23-24 include each limitation of their parent claim and are therefore also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

Claims 6, 16 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fogarty et al. (U.S. Patent No. 5,690,648) alone or in view of Thomson et al. (U.S. Patent No. 6,183,485) and further in view of Fleischhacker (U.S. Patent No. 4,596,559). Claims 6, 16, and 25 include each limitation of their respective parent claims and are not obvious over the cited references since there is no motivation to combine the references as asserted by the Examiner. As discussed above, Fleischhacker discusses an introducer tool for introducing a catheter into a blood vessel. (Abstract). In contrast, the Fogarty reference discusses using a trocar 22 to introduce an instrument 26. (Col. 6, lines 31-41). However, instrument 26 is used for manipulation and then is manually removed by the surgeon. There is nothing in the way of removing the trocar 22. Accordingly, there is simply no motivation in the art for the trocar 22 to have a tear-away structure as discussed in Fleischhacker. Reconsideration and allowance is respectfully requested.

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Fogarty et al. (U.S. Patent No. 5,690,648) alone or in view of Thomson et al. (U.S. Patent No. 6,183,485) in further view of Hermann et al. (U.S. Patent No. 5,843,031). Claim 7 includes each limitation of its parent claim and is not obvious over the cited references for the reasons discussed above. Reconsideration and allowance is respectfully requested.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 359-3267 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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Date 8/7/06

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 7 day of ~~May~~ August, 2006.

  
Name

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Signature